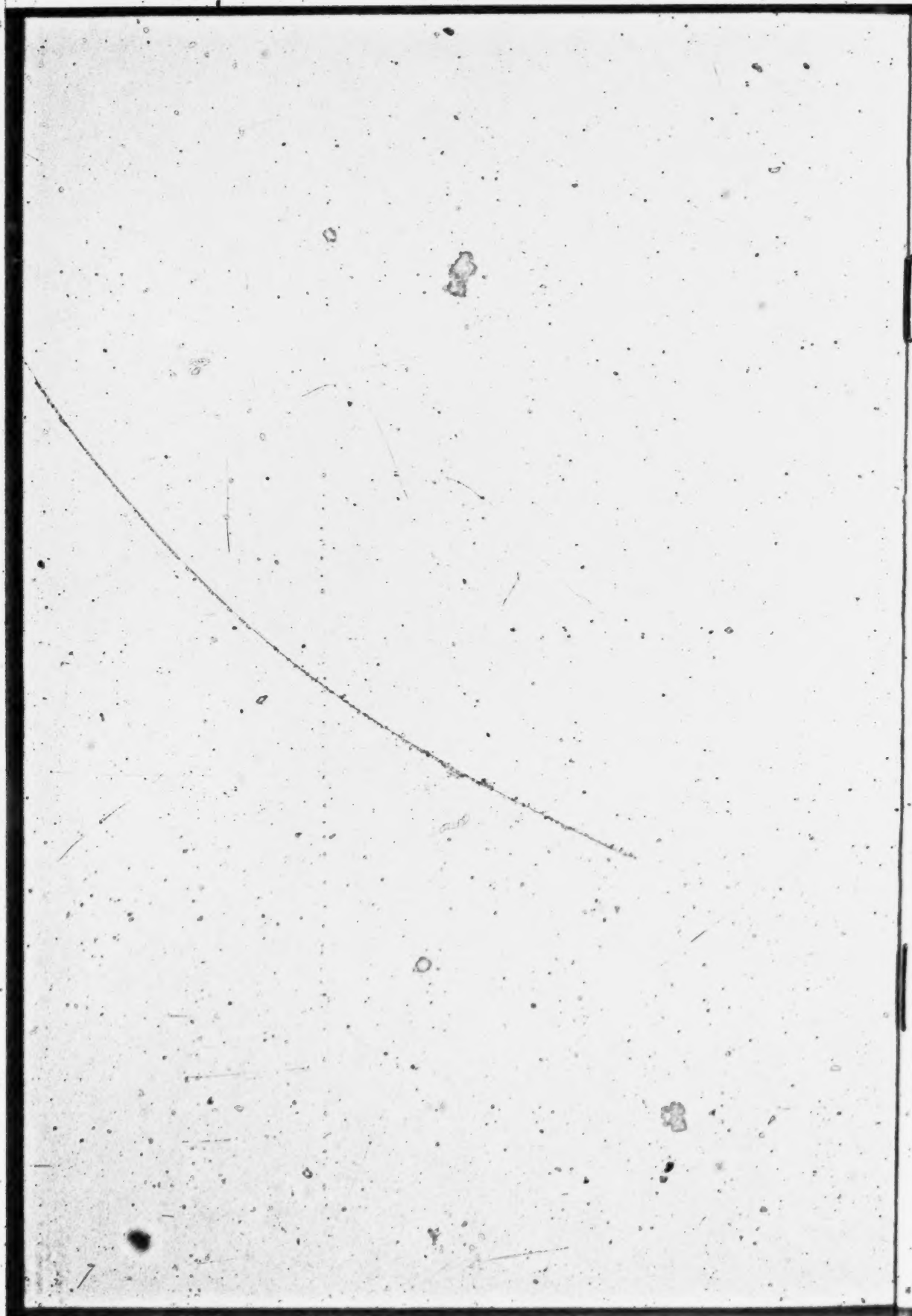

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1329

SOUTHERN CALIFORNIA EDISON COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

REPLY OF TRANSWESTERN PIPELINE COMPANY TO PETITION FOR WRIT OF CERTIORARI

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FIDELITY PRINTING COMPANY, INC., HOUSTON

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Transwestern Pipeline Company and El Paso Natural Gas Company were applicants for Federal Power Commission authorization to install facilities and to increase their deliveries of natural gas to the southern California market. The competing applicant in the proceedings was Gulf Pacific Pipeline Company. Its proposal was to deliver gas from Texas direct to the electric generating stations of Southern California Edison Company and the Department of Water and Power of the City of Los Angeles for use as fuel in electric generation. The hearings on these competing applications were very lengthy, extending from June 1964 through February 1965.

Transwestern disagrees with Edison's statement of the case.

What the Commission Did

The Commission did two things. It granted the Transwestern and El Paso applications and it denied the Gulf Pacific application to transport gas for Edison.

Insofar as its order, issued through Opinion 500, related to the denial of the Gulf Pacific application, it is moot. Gulf Pacific has been dissolved. The gas supply contracts between Edison and the producers have been cancelled (R. 69155A, 69184, 69214) The gas has been sold to others. Gulf Pacific's parent has stated in effect that the Commission's denial of the application was a blessing since under current money conditions the project likely could not have been financed and the funds could be more profitably invested elsewhere. (1966 Annual Report, Tenneco, Inc., p. 11, R. 53192)

Edison's stated concern with the Commission's denial of the Gulf Pacific application is that it will be "utilized in the future as a precedent" against Edison. (Edison Petition, p. 12) The Commission acted only on the Gulf Pacific application. It did not purport to prejudge any future Edison project.

Edison does not complain of the issuance of authorization to Transwestern and El Paso. To the contrary, it contends that the now defunct Gulf Pacific project was not "mutually exclusive" with the Transwestern and El Paso applications. Edison's sole complaint with regard to the Transwestern and El Paso authorizations is that the Commission, having, in Edison's view, concluded that economics controlled,

should have conditioned the Transwestern and El Paso certificates to *prevent* the delivery of gas to Edison when fuel oil is available at lesser cost to Edison[1].

What the Court Did

The Court of Appeals concluded that the record supported the issuance of authorizaion to Transwestern and El Paso. Among other things, the record showed that the proposed Transwestern gas supplies represented the lowest cost gas available, that the proposed Transwestern construction represented the least expensive capacity available, that Transwestern's existing pipeline system was being only partially utilized and that the capacity of that system could be developed at a very low incremental cost. (R. 56028, 68866-67) In addition, the record showed that Transwestern had a critical need to *sell* additional volumes of gas. Transwestern was under take or pay for obligation to purchase or pay for substantially more gas than it was then able to sell under its existing market commitments. (R 68876, 68926, 67452) It was, therefore, in the position of requiring immediate sales to balance its purchase obligations with its market requirements. At the same time it had the lowest cost capacity available. These facts were not challenged.

What the Court did was to hold that the Commission decision was not arbitrary and that it found record support. It can hardly be contended that its approval of the Transwestern or El Paso projects was arbitrary. The Commission's decision was correct. The Court's decision was correct.

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[1] This contention is nonsense. It was urged in only the most cursory fashion in Edison's Motion for Rehearing before the Commission.

Edison's Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have duly served copies of the above Reply of Transwestern Pipeline Company on all parties to the above proceeding as required by Rule 33 of the Rules of the Supreme Court.

/s/ JAMES W. MCCARTNEY
James W. McCartney